

## **EXHIBIT 3**

## **THE PARTIES**

1. Spanish Broadcasting System, Inc. (“SBS”) is a corporation existing under the laws of Delaware, with its principal place of business in Coconut Grove, Florida. SBS, which was founded in **1983**, is the country’s largest independent Hispanic-owned radio operator, and owns and/or operates 16 stations in the Continental United States.

2. Clear Channel Communications, Inc. (“CC”) is a corporation existing under the laws of Delaware, with its principal place of business in San Antonio, Texas. CC, by far the largest radio company in the United States with over **1,200** stations (more than four times greater than its nearest competitor), dominates the radio industry. According to BIA, a statistical authority utilized by CC, CC had **27%** of the overall advertising revenues of radio in 2001. CC’s website has described CC’s role in the industry as “Clear Channel ~~is~~ radio.” (Emphasis in original.) Twelve of CC’s 1200 stations broadcast in the Spanish language.

1. Hispanic Broadcasting Corporation (“HBC”) is a corporation existing under the laws of Delaware, with its principal place of business in Dallas, Texas. HBC is the largest Spanish-language radio owner/operator in the Continental United States with 63 stations.

2. At all times since the formation of HBC on February **14, 1997**, CC has owned **100%** of the Class B shares (convertible into **26%** of the Class A shares) of HBC and the family of HBC’s CEO McHenry Tichenor, Jr. has owned **13%** of the Class A shares of HBC. CC has taken actions that directly affect success of HBC’s Spanish-language radio competitors.

3. HBC has attempted to monopolize the sale of advertising for Spanish-language radio in the United States and has conspired with CC to do so. CC has received substantial monetary gain as a result of its participation in that conspiracy. Since February **14, 1997**, CC has

consolidated **26%** of HBC's net income into CC's income statements. (R. Mays Dep. **115-117**, Tab 1.) Moreover, as a result of their conspiracy, HBC and CC will continue to receive substantial monetary gain: HBC will continue to be rewarded with supra-competitive revenues and profits and CC's investment of **\$165** million in HBC stock (Ex. **84**, Tab **4**) has a market value in excess of **\$600** million under the terms of the proposed Univision transaction announced on June 12, 2002.<sup>1</sup> The anticompetitive conduct of CC and HBC has already weakened SBS, which is HBC's most significant competitor.

#### **Business of HBC and SBS**

**4.** HBC and SBS are the **two** largest Spanish-language radio providers in the United States. Both companies assemble a variety of programming that they broadcast over specific airwaves in various metropolitan areas with the goal of attracting Hispanic listeners. As CC's **1995 10-K** reported in describing its May **1995** acquisition of **21.4%** of Heftel Broadcasting Corporation (a predecessor of HBC), "Strategically, this acquisition positions the company in the attractive and rapidly growing Spanish-language broadcasting niche, because the Hispanic population is the fastest growing population segment in the United States, and because fewer stations per capita target the Spanish-language market... ." (Tab **7**.)

**5.** Hispanics represent a significant segment of the U.S. population. According to data from the most recent U.S. Census in **2000**, there were over **30** million people of Hispanic origin living in the United States, accounting for about **12%** of the U.S. total population.\* This population is projected to grow by about **43%** to about **47** million over the next decade.<sup>3</sup> Moreover, Hispanics have substantial buying power, estimated at about **\$452** billion in 2001.<sup>4</sup> From **1990** to 2000, the buying power of the Hispanic population more than doubled, and this

figure is expected to increase significantly over the next ten years.<sup>5</sup>

6. HBC and SBS derive their revenues from selling time to advertisers. The companies which advertise on Hispanic media are attempting to reach Hispanic audiences. Importantly, these advertisers are the consumers of Spanish-language radio.

7. SBS and HBC operate separate radio stations in various cities throughout the United States. The top ten metropolitan areas in the Continental United States with the largest Hispanic population are Los Angeles, New York, Miami, Chicago, Houston, San Francisco, Dallas, San Antonio, Phoenix, and Brownsville. It is possible to reach over **60% of** the Hispanic population of the United States by broadcasting in these ten cities and to reach over 70% of the Hispanic population **of** the United States by broadcasting in 15 cities, considerably less than the number **of** cities required to reach the same percentages of the general population.<sup>6</sup> HBC currently operates Spanish-language radio stations in each **of** the top ten cities, and in **14 of** the top 15 cities.

8. SBS currently operates Spanish-language radio stations in five **of** those cities (the four largest – Los Angeles, New York, Miami, Chicago – and the eighth largest – San Antonio). SBS does not operate Spanish-language radio stations in five of those cities (Houston, San Francisco, Dallas, Phoenix and Brownsville). SBS' growth has been impaired by the partially successful efforts of CC and HBC to limit SBS' access to financing, which has resulted in weakening SBS' competitive position in the cities it serves (because SBS' expansion in those five cities was delayed and its presence in those cities was reduced) and in preventing SBS from acquiring and operating Spanish-language radio stations in the other five cities.

9. Randall Mays, CFO of CC and Heftel, urged potential investors to participate in the February 14, 1997, Heftel-Tichenor Media System offering that led to the creation of HBC by

asserting that the combined entity (HBC) would have revenues larger than the combined revenues of the next nine largest Spanish radio broadcasters. (Ex. 70, Tab 8; R. Mays Dep. 210-216, 220-226, Tab 1.)

10. Firms with high shares in markets with high barriers to entry are best positioned to exercise market power. Importantly, Spanish-language media is characterized by high barriers to entry. This observation is supported by CC itself, which admits in its 1995 Form 10-K (filed on April 1, 1996) that high barriers to entry (such as the availability of stations, the strength of established competitors and lack of familiarity of English-language radio operators with Hispanic culture, music, language and personnel) led it to purchase an existing competitor: “The Company believes that Spanish-language broadcasting is an attractive long-term growth industry due to the fact that well-established market positions held by existing radio stations make it difficult to start new Spanish-language stations . . . [and so] the Company opted to invest in an established Spanish-language broadcaster . . .” (Tab 7.)

#### **CC's Business**

11. CC is the dominant provider of English-language radio. The Telecommunications Act of 1996, which deregulated the radio industry, made it possible for a single owner like CC to own many more radio stations than previously permitted by the Federal Communications Commission (“FCC”). As a result, CC expanded from less than 40 radio stations before that Act was passed to more than 1200 stations today.

12. CC has the ability to raise the costs of HBC's rivals by affecting their access to the investment community, including their access to capital as well as coverage of their stock by analysts. CC also has the financial resources to bid up radio station prices in order to prevent

SBS or other potential entrants from acquiring limited radio spectrum. Further, CC also has the ability to affect the ability of HBC's rivals' access to media buyers.

13. As described *infra*, CC is in control of several essential facilities required for operating a Spanish-language radio station. For example, in each of the top ten cities, CC has the exclusive right to produce concerts in the largest venues. These venues allow CC the ability to prevent SBS and other potential entrants from access to artists, programming, and associated promotional opportunities that attract listeners and as a result, advertising dollars.

14. Indeed, the FCC anticipated the potential that CC may exploit its own power on behalf of HBC and, as a result, required CC to be a passive investor as a condition of maintaining its ownership interest in HBC. As shown *infra*, CC has failed to meet that requirement of passive ownership and thus has used its power for HBC's benefit.

### **HBC and CC's Anticompetitive Behavior**

15. HBC and CC have engaged in anticompetitive behavior to attempt to injure competition generally and SBS specifically. Their anticompetitive behavior has included:

- a. Creating HBC for the purpose of dominating the Spanish-language radio;
- b. Preventing rivals from acquiring additional radio stations, thereby enabling HBC to acquire these rivals at unfairly low prices;
- c. Violating FCC attribution requirements of passivity, thereby allowing HBC an unfair advantage over its competitors; and
- d. Raising rivals' costs (*e.g.*, interfering with SBS' IPO and its subsequent analyst coverage, inducing institutional investors to sell their holdings of SBS stock, as well as foreclosing HBC's rivals from access to important performance venues, and thereby to artists).

16. As a result, advertisers and purchasers of their products, listeners, and artists face higher prices, reduced quality, and fewer choices.

### CC's Creation of HBC

17. HBC resulted from the February 14, 1997 merger of **two** predecessor Spanish-language radio companies: Heftel Broadcasting Corporation (“Heftel”) – majority owned and controlled by CC – and Tichenor Media System, Inc. (“TMS”). Heftel and TMS began to focus on Spanish-language radio programming in the 1980s.

18. The agreement that led to the Heftel-TMS merger was signed in July 1996. As a result of the Heftel-TMS merger, the combined entity had **37** stations in 10 cities.

19. A principal catalyst for that merger and the subsequent rapid growth of HBC was the Telecommunications Act of 1996, which deregulated the radio industry and made it possible for a single owner to own many more radio stations than previously permitted by the FCC.

20. Significantly, the Defendants’ contemporaneous filings with the SEC indicate that the creation of HBC was motivated by the intent of its founders to dominate the markets for Spanish-language broadcasting. CC’s Form 10-K for 1995 (filed on April 1, 1996) described CC’s intention to do so:

“Consistent with the Company’s **own** long-term strategy to dominate its markets, Heftel’s strategy is to become the dominant Spanish-language broadcaster in the United States.”

(Tab 7.) CC never disguised its intention to use the merged Spanish-language entity that became HBC to dominate the Spanish-language radio. As Lowry Mays, CEO of CC and Heftel, stated in CC’s SEC Form 14d-1 filing on July 11, 1996:

“The combined Heftel-TMS company ... would be the only Spanish-language radio company to own and operate

Spanish-language radio stations in each of the top ten Hispanic markets in the United States ... [and] would own the top-rated Spanish-language station in eight of the ten top Hispanic markets... We went forward **for** the tender offer for Heftel based on a strong belief in Spanish-language radio and the fact that we were uniquely positioned to consolidate the business. We view the merger of Heftel and Tichenor Media as the most essential step in the process of consolidating the Spanish-language radio industry.”

In that same SEC filing, Tichenor acknowledged the merged entity’s dominant position:

“The combination **of** Heftel and Tichenor Media Systems will create the largest Spanish-language radio broadcaster in the United States, and the only one with a presence in each of the top ten markets.”

(Tab 9.) As described below, CC and HBC were prepared to achieve their stated goal of dominance through any means available.

21. As part of CC’s strategy to create an entity to dominate Spanish-language broadcasting, it actively worked to prevent SBS and other potential entrants from acquiring limited radio spectrum that would have allowed them to compete more effectively. In particular, Defendants obstructed SBS’ attempts to acquire radio stations in Los Angeles; CC assisted Heftel and TMS in acquiring additional radio stations; and, significantly, Defendants engaged in a predatory strategy intended to destroy their principal rival. Defendants’ actions caused SBS to incur significantly higher costs of entry, both because of artificially inflated purchase prices for stations as well as the significant additional costs of overcoming the already established loyalty of listeners to HBC’s radio stations. Moreover, this delay caused advertisers and consumers **of** their products, listeners, as well as artists to face higher prices, lower quality, and fewer choices.

#### **Use of CC’s Financial Resources to Benefit HBC**

22. CC took actions during the pendency of the merger between Heftel and TMS that made use of CC’s substantial financial resources to benefit the merged entity to the detriment

and at the expense of SBS. None of these transactions would have been possible for HBC, or its predecessors, to consummate without utilizing the financial resources of CC. CC's actions constituted precisely the kind of behavior that would be forbidden by the FCC attribution rules requiring passive investor behavior by CC after the Heftel-TMS merger was effectuated on February 14, 1997.

a. In October 1996, Lowry Mays and Randall Mays of CC and Heftel interrupted SBS' negotiations with Golden West Broadcasters (the broadcasting arm of Gene Autry) on an innovative proposal to operate a radio station (KSCA-FM) owned by Golden West and to acquire KSCA-FM after Autry's death (which would reduce the seller's taxes). CC acquired a \$10 million option on KSCA-FM on December 23, 1996, and then assigned that option to Heftel. That option was acquired by CC because Golden West would only rely on CC's credit, and not on HBC's credit, in doing that deal. (L. Mays Dep. 81-94, Tab 2; R. Mays Dep. 71-92, Tab 1.) (KSCA-FM is now HBC's highest rated station in Los Angeles.)

b. CC loaned \$40 million to Tichenor Media to enable it to purchase two FM radio stations in northern California. (L. Mays Dep. 80, Tab 2.)

c. Lowry Mays and Randall Mays of CC and Heftel attempted to acquire two radio stations (WXDJ-FM and WRMA-FM) that were for sale in Miami, so that HBC rather than SBS could acquire the stations. (L. Mays Dep. 111-115, Tab 2.)

d. In December 1996, CC (along with Heftel and TMS) induced Katz Hispanic Media to breach its long-term contract as SBS' national sales representative in order to become the national sales representative for the merged Heftel-TMS entity that became HBC.

**23.** Throughout the past six years, the broadcasting investment industry has referred in

glowing terms to the many “benefits” available to HBC as a result of its relationship with its corporate parent CC as HBC’s “halo” (or the “CC halo effect”). According to Hinson of HBC, CC’s “halo effect” manifested itself during the February 14, 1997 underwriting that created HBC because CC’s relationship with the equity markets “spread over” to HBC and “has been beneficial” to developing “relationships on the street”. (Hinson Dep. 126-128, Tab 3.) The “halo effect” was recognized in the August 14, 1996 CSFB report on Heftel, entitled “The King of Spanish Broadcasting”:

“The opportunity to invest alongside Clear [Channel] is too good to pass up. Heftel should, over time, trade much like Clear Channel, except that Spanish language broadcasting is growing faster than non-Spanish broadcasting, arguing perhaps for a higher multiple . . . . With CCU involved, there is little doubt in ~~our~~ minds that Heftel will continue to be the consolidator of Hispanic broadcasting in the U.S. . . . A consolidated Hispanic broadcasting investment is truly a blockbuster, yet no one but a CCU could put it together.”

(Ex. 108, Tab 10.) Hinson testified that CC was uniquely positioned to put together the merger of TMS and Heftel. (Hinson Dep. 122, Tab 3.)

#### **CC’s Attempts to Include SBS In Heftel-TMS Merger**

24. During the pendency of the merger between Heftel and TMS, on August 22, 1996 (only six weeks after the Heftel-TMS merger documents were signed), Lowry Mays of Heftel and CC and Tichenor of TMS also sought and held a meeting with Raul Alarcon, Jr. (Chairman, President and Chief Executive Officer of SBS) and SBS Attorney Jason Shrinsky as part of an unsuccessful effort to acquire SBS for \$350 million and merge it with Heftel and TMS. That meeting terminated after Alarcon suggested a valuation of \$1 billion for SBS. (L. Mays Dep. 66-81, Tab 2.)

25. CC and Heftel continued their efforts to acquire SBS in late October 1996, when Randall Mays of CC and Heftel met with SBS attorney Shrinsky, during a media conference in New York City they both attended, and discussed the continuing interest of CC and Heftel in acquiring SBS for the combined Heftel-TMS entity. Mays suggested to Shrinsky at that meeting that CC and/or Heftel wanted to buy SBS at a considerably lower price than that discussed at the August 1996 meeting. After Shrinsky told Mays that such a proposal was not a basis for discussion, Mays told Shrinsky that if SBS did not accept the offer, CC and/or the combined Heftel-TMS entity “will ultimately buy SBS on the bankruptcy court steps.” (J. Shrinsky Dep. 220-23, Tab 11; R. Mays Dep. 134-140, Tab 1.)

#### **Reasons Why CC Kept HBC As A Separate Entity**

26. CC decided to keep the combined Heftel-TMS entity (now HBC) separate from CC for several reasons. One reason was that the market value of HBC stock was expected to trade at a higher multiple than the stock of CC because the demographics of Hispanic media sector were growing faster than those of the general media sector, and over time the Hispanic population would increase as a percentage of the overall population and the buying power of Hispanics would increase. (Ex. 70, Tab 8.) CC’s expectation that the Hispanic population of the United States (and corresponding listening audience and buying power) would continue to grow explosively has been fully met and indeed exceeded.

27. The value of CC’s investment in HBC stock could particularly be enhanced if, as CC and HBC perceived (and argued to potential investors), HBC’s future revenue growth could be accelerated by closing or eliminating the “revenue gap” between the percentage of overall advertising revenues received by Spanish-language media and the percentage of overall audience

share enjoyed by Spanish-language media. The degree to which those rates differ depends on the particular demographics of each of the top ten Hispanic cities. Spanish-language advertising commands a significantly lower rate than does English-language advertising for the same demographic audience. That “revenue gap” was estimated at \$279 million in Heftel-TMS presentations to the financial community in connection with the February 14, 1997 underwriting. In other words, if Spanish-language media would increase its advertising rates over time to those of English-language media, overall annual advertising revenues on Spanish radio in the top ten cities would increase from \$321 million to \$600 million. (Ex. 70, Tab 8; Hinson Dep. 115-120; Tab 3.) By creating HBC and keeping its 26% interest and veto power over critical HBC activities (by virtue of CC’s 100% ownership of HBC’s Class B stock), CC could participate in that growth through HBC. (HBC’s June 2, 1999, Prospectus Supplement notes that CC “engage[s] in the Spanish-language radio broadcasting business through its ownership of our shares.”) (Ex. 98, Tab 12.)

28. Another reason to keep HBC separate from CC was that the Telecommunications Act of 1996 imposed some limits on the number of radio stations that one company could own, and CC did not want to limit the growth of its English-language radio operations in the cities in which HBC would operate Spanish-language radio stations.

29. The FCC permitted CC to maintain an interest in HBC after the February 14, 1997, Heftel-TMS merger on CC’s representation that it would abide by the FCC’s “attribution” rules. The purpose of those FCC rules is to prevent CC, with control over substantial inputs necessary in the production of radio programming, from exploiting its market power in the Anglo market or from leveraging it in order to achieve dominance in a separate market, such as the

Spanish-language market. Those rules required CC to be a passive investor in HBC which, *inter alia*, prevented CC from being involved in or controlling HBC's management or operations, having any role in determining the composition of the HBC Board and owning more than **33%** of HBC. CC has violated the FCC's attribution rules and thereby benefited from the unlawful control of more than the permissible number of radio stations in a number of markets, including **14** of the **15** markets in which HBC operates radio stations (all except Brownsville), which has provided CC and HBC with power in those markets beyond that permitted by FCC regulations, thereby negating the regulatory review that permitted CC's ownership of its HBC interest. **An** example of CC's attempt to use its control of HBC to thwart the attribution rules came in the Fall of **1999**, when the FCC had to prevent CC from attempting to use HBC as the recipient of the divestitures that CC would be required to make to get approval of CC's August **30**, 2000, acquisition of AM-FM Radio, Inc. Examples of CC's actual violations of the FCC's attribution rules include the following:

a. HBC's five-man Board of Directors still has at least two "independent" members (Emesto Cruz and James Raines) who were appointed by CC to the pre-merger Heftel Board. (L. Mays Dep. **43-49**, Tab 2; R. Mays Dep. **58-60**, Tab 1.) Those same two "independent" directors formed the special committee that passed on the fairness of the Heftel-TMS merger, and constitute two-thirds of HBC's Audit Committee. Both the investment banking firms of Cruz and Raines have received fees and compensation from CC for investment banking services rendered to CC; Cruz' firm (CSFB) did so as recently as 2002. (L. Mays Dep. **43-49**, Tab 2; R. Mays Dep. **58-60**, **63-65**, Tab 1.) Cruz' investment banking firm (CSFB) also provided the fairness opinion in connection with the Univision-HBC merger that blessed the

merger partner selected by CC for HBC. Raines also demonstrated his lack of independence from CC in his March 19, 1999 letter to Randall Mays of CC in connection with a potential HBC merger with Univision that would have permitted Tichenor of HBC to name one independent director to the new entity's Board of Directors:

“I would really appreciate you lobbying on my behalf to become the independent director that Mac Tichenor can choose or can nominate. You know I will do right for everybody and this is important to me in terms of the money, etc. Unfortunately, I need all the help I can get and I don't have a big nest egg. Anything you and Lowry can do to help this endeavor would be greatly appreciated.” (Emphasis added.) (Ex. 96, Tab 13.)

The continued participation of Cruz and Raines on the HBC Board illustrate the behavior that the FCC intended to prohibit in order to protect Spanish-language radio advertisers and the consumers who purchase their products, listeners, and artists, as well as the remaining 74% of HBC stockholders.

b. The HBC March 3, 1997 Certificate of Incorporation gives CC veto power over critical HBC activities (including the sale or transfer of all or substantially all of HBC's assets or HBC's merger with another entity where HBC's pre-merger shareholders would not own at least 50% of the capital stock of the surviving entity). As described more fully *infra*, CC used that veto power to select Univision as the merger partner for HBC in the transaction announced on June 12, 2002, and to induce HBC to reject SBS' superior offer and instead select Univision's offer, which was inferior for all HBC shareholders except for HBC management and CC.

c. CC accounts for its investment in HBC under the equity method of accounting, which permits CC to consolidate 26% of HBC's net income into CC's income statement. According to CC's Form 10-K for 2001 (filed March 20, 2002), the equity method may only be

used if **CC** owns 20% to 50% of the voting common stock of **HBC** or if **CC** “otherwise exercises significant influence over operating and financial policies of the company” in which **CC** has an investment. (Tab 14.) Because the **HBC** Class **B** stock that **CC** owns is non-voting, **CC**’s Form 10-K constitutes **CC**’s acknowledgement that contrary to **CC**’s “attribution” representations to the **FCC**, **CC** “exercises significant influence over operating and financial policies” of **HBC**.

**Continuing Anticompetitive Attempts by CC and HBC to  
Limit or Impair SBS’ Financing Efforts**

30. **CC**’s power derives from its ability to raise rivals’ costs, both by limiting rivals’ access to capital and by restricting their access to various essential inputs, such as radio spectrum, performance venues, and artists. The term “raising rivals’ costs” refers to behavior undertaken by one firm that has the effect of increasing another firm’s cost structure. When exercised, this ability to influence a rival’s cost will weaken that rival’s ability to compete in the marketplace. In the extreme, the strategy of raising rivals’ costs will result in a practice known as “vertical foreclosure.” Indeed, in such a case, a rival firm would be completely excluded from participating in the market.

31. **CC** and **HBC** understood that together they could raise SBS’ and other potential entrants’ costs and thereby harm competition.

32. The fact that **SBS** is the most viable competitor to **HBC** strongly suggests the actions that harm **SBS**’ ability to compete vigorously will also harm ultimate consumers, *i.e.*, Spanish-language radio advertisers and the consumers of their products, listeners, and artists. Moreover, Defendants’ conduct will not only harm SBS, but will also send the stark message to other competitors in and to potential entrants into those markets.

33. **SBS** has attempted to grow rapidly in the past few years. That growth has paralleled

the recent rapid growth of the Hispanic population in the United States. In order to grow at that pace, SBS has been required to raise capital through public debt and equity offerings. Because radio stations may operate in the United States only if they hold licenses from the FCC, and because most of the limited number of licenses for FM stations in the top ten Spanish-language cities were long ago licensed to English-language stations, and those licenses only infrequently are offered for sale, the growth of SBS has been limited by its ability to raise enough capital to acquire stations if and when they become available for sale.

34. Although they have been rebuffed in their various efforts through the years to acquire SBS, CC and HBC have continued to attempt to extend HBC's unlawful dominance by interfering with SBS' financing efforts and by attempting to stop SBS from acquiring additional stations or to increase the cost of those acquisitions by SBS. These efforts were motivated by Defendants' understanding that SBS is and has been HBC's most effective competitor, and that retarding SBS' expansion was a key element in Defendants' plan to grow and maintain HBC's dominance and to enable HBC to control prices or exclude competition. Where SBS has been able to obtain the financial resources to acquire stations and compete with HBC, SBS has shown itself to be a reasonably effective competitor. HBC has understood that in order to prevent its most effective competitor (SBS) from eroding HBC's dominance, HBC had to act unfairly and anticompetitively to retard or eliminate SBS' presence.

#### **CC and HBC's Interference with SBS' IPO**

35. In the first half of February 1997, in the final stages of the February 14, 1997 financing for the merged Heftel-TMS entity that became HBC, Randall Mays of Heftel and CC induced each of the five underwriters on that financing (the lead underwriter, BT Alex Brown

("BTAB"), and the four co-leads, Lehman Brothers ("Lehman"), Smith Barney, Montgomery Securities and CSFB) to commit to him that they would not participate in an initial public offering ("IPO") for SBS. (R. Mays Dep. 151, 162-188, 204-207, Tab 1; Hinson Dep. 106-108, Tab 3.) Randall Mays' request reflected his understanding that, although he and his father Lowry Mays had failed to acquire SBS for the new entity, he still needed to ~~try~~ to prevent HBC's principal competitor from obtaining financing. Randall Mays took these actions only three months after he had told SBS' attorney Jason Shrinsky that HBC would buy SBS "on the bankruptcy court steps." (*See* Paragraph 27, *supra*.) Depriving SBS of additional financing would retard its growth, lessen its competitive strength and reduce the price at which HBC could acquire SBS in the future. Randall Mays' request only related to SBS, and not to other Spanish-language radio companies or other media companies, thereby reflecting his understanding that SBS was and would be HBC's principal direct competitor.

36. Hinson, HBC's CFO, recognized that an IPO would be "good for SBS" and that HBC "would rather them not do it" because it would improve SBS' capital structure and make SBS a more effective competitor against HBC. (Hinson Dep. 161, Tab 3.)

37. SBS began work on its IPO in May 1999 and selected Lehman as sole lead manager and selected Merrill Lynch, BTAB and CIBC to be the co-managers of SBS' IPO.

38. In late June or early July of 1999, when the SBS IPO was being readied for the market, Randall Mays of CC called Elizabeth Satin (a Managing Director of Lehman who was working on the SBS IPO and who had worked on the February 14, 1997 Heftel-TMS underwriting). In no uncertain terms, Randall Mays told Satin not to go ahead with the SBS IPO because Alarcon was a drug user and/or drug trafficker.<sup>7</sup> Although he did not reveal it to Satin,

the only source for Randall Mays' allegations was a conversation with Hinson (the CFO of HBC) in the Summer of **1999**, in which Hinson had told Randall Mays that he had heard that there was a public filing that alleged that Alarcon was a drug user. Mays has testified that he did not know whether the rumor he passed on to Satin was true, that he had no knowledge of whether Alarcon had ever used drugs, and that he never attempted to determine if the rumor was true. Mays also reminded Satin of his February **1997** request that Lehman not participate in SBS' IPO and threatened that if Lehman did so, Lehman would not receive any future business from CC or HBC. (Hinson of HBC later made a similar call to Satin threatening to withhold future HBC underwriting business from Lehman. Both CC and HBC have made good on their threats, and Lehman has not received any business from CC or HBC since those calls. Hinson made similar calls to the other four investment bankers in the February **14, 1997** Heftel underwriting syndicate.) (R. Mays Dep. **151, 162-188**, Tab **1**; Hinson Dep. **193-202**, Tab **3**.)

When Satin asked Mays why he was focusing exclusively on SBS and not on other Spanish-language radio competitors (such as Radio Unica, which was also launching an IPO at that same time), Randall Mays dismissed the notion that HBC had other competitors and also told Satin that SBS was "the only real competitor to HBC." Mays' unexpected and disparaging allegations precipitated a concerned call from Satin to Shrinsky inquiring whether Mays' assertions were true. Shrinsky had to travel to New **York** to meet with Satin and Roman Martinez of Lehman. Shrinsky told them that he had known and worked with the Alarcon family for many years, represented that there was no truth in the allegations, and urged Lehman to investigate the allegations. Lehman did so and found them without merit, and the IPO of SBS proceeded.

39. When BTAB was being considered for the SBS P O underwriting syndicate, Alarcon had inquired whether BTAB's ongoing work for CC or HBC constituted a conflict and had been assured by Jeff Amling of BTAB (now co-head of the Global Media Investment Banking Group of BTAB's successor Deutsche Bank) that it did not. SBS then selected BTAB instead of alternative co-manager candidates (including Goldman Sachs and Salomon Brothers) and BTAB officially joined the SBS IPO underwriting syndicate.

40. However, a few weeks later (in late July or early August of 1999), Amling and Drew Marcus of BTAB called Alarcon and Joseph Garcia (the Chief Financial Officer of SBS). Amling was emotional and livid in describing to Alarcon and Garcia a telephone call he had received ~~from~~ Randall Mays, who made it clear to Amling (who had represented the merged entity in the February 14, 1997 Heftel-TMS underwriting) that BTAB could not participate in the SBS IPO without endangering continuation of the multi-million dollar fees it received from CC and HBC.

41. Amling and Marcus had also called Hinson and Tichenor of HBC after the Randall Mays call to determine if HBC would agree to their participation in the SBS PO. Hinson and Tichenor told the BTAB representatives that they would not agree to their participation in the SBS IPO and that if BTAB did so, HBC would reduce or eliminate the amount of business BTAB received from HBC. (Hinson Dep. 175-193, Tab 3.)

42. Amling stated to Alarcon and Garcia that as a result of Randall Mays' threats, BTAB was left with no choice but to withdraw from its P O work for SBS, leaving only Lehman, Merrill and CIBC in the SBS underwriting syndicate for SBS' November 30, 1999 PO. Prior to the CC and HBC calls, BTAB had actively sought participation in the SBS PO, was excited at

the prospect of joining the underwriting syndicate, and had acted as an established leader in radio sector public offerings in seeking to be included in the SBS IPO syndicate. The calls with Randall Mays, Hinson and Tichenor reminding Amling of the financial importance of CC and HBC to BTAB media group, was enough to unhook BTAB from its commitment to participate in the P O of an HBC competitor and to cause BTAB to act against what -- absent the CC and HBC threat -- ~~was~~ in BTAB's own best interests (receiving the fees that would be generated by the SBS underwriting). BTAB was immediately rewarded for abandoning its commitment to participate in the November 30, 1999 SBS P O ; HBC retained BTAB to participate in its November 15, 1999 underwriting (**Ex. 71**, Tab 15), and BTAB has continued up to the present to receive investment banking fees from CC and HBC. (R. Mays Dep. 67-70, 160-161, 204-207, Tab 1; L. Mays Dep. 97-99, Tab 2.) Roman Martinez, who led Lehman Brothers' work on the SBS IPO, told Alarcon that in his 30 years in the investment banking business, he had never seen a firm agree to participate as a lead underwriter, come to due diligence meetings and then back out at the request of a competitor of the offeror.

**43.** On August 13, 1999, in an attempt to cause CC and HBC to cease their anti-competitive behavior and allow the SBS P O to proceed, Alarcon sent Lowry Mays of CC and Tichenor of HBC a letter complaining about the wrongful actions then **known** to have been taken by Randall Mays and perhaps others on behalf of HBC and CC to prevent SBS from realizing its IPO. Alarcon's letter was dismissed and never answered by either CC or HBC. Despite Alarcon's written protest, which included specific instances of wrongdoing by CC and HBC that, if left uncorrected, could lead to litigation, CC and HBC continued their actions against SBS.